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DLB/jp 3/27/01 226937

Attorney's Docket No.: 07148-063003

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Lorin DeBonte, et al. Art Unit : Unknown  
Serial No. : 09/771,904 Examiner : Unknown  
Filed : January 29, 2001  
Title : FATTY ACID DESATURASES AND MUTANT SEQUENCES  
THEREOF

Commissioner for Patents  
Washington, D.C. 20231

TECH CENTER 1600/2900

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**DECLARATION OF DAVID L. BIEK IN SUPPORT OF PETITION**  
**PURSUANT TO 37 C.F.R. §1.47**

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JAN 25 2002

PETITIONS OFFICE

I, David L. Biek, declare as follows:

1. I am employed as a Senior Attorney by Cargill, Incorporated ("Cargill").
2. On June 12, 1997, Cargill filed U.S.S.N. 08/874,109, which is a continuation-in-part of U.S.S.N. 08/572,027 that was filed by Cargill on December 14, 1995. Cargill is the assignee of U.S.S.N. 08/874,109 by virtue of an assignment recorded in the U.S. Patent and Trademark Office for U.S.S.N. 08/572,027 on September 20, 1996 at Reel 8143, Frame 0085.
3. The above-identified U.S.S.N. 09/771,904 application was filed by Cargill on January 29, 2001 as a continuation application under 37 C.F.R. § 1.53(b) of U.S.S.N. 08/874,109. The pending claims in the continuation application are the same as those that were in the prior U.S.S.N. 08/874,109 application. Cargill is the assignee of the U.S.S.N. 09/771,904 application by virtue of the aforementioned assignment deed.

DLB/jp 3/27/01 226937

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4. Pursuant to 37 C.F.R. § 1.48(f), inventorship in the U.S.S.N. 09/771,904 application is being corrected to name Lorin R. DeBonte, Guo-Hua Miao and Zhegonǵ Fan, rather than the previously named Lorin R. DeBonte, Zhegong Fan, Willie H.T. Loh and Basil S. Shorrosh.

5. Guo-Hua Miao is an employee of E.I. du Pont de Nemours and Company ("DuPont"). Cargill determined that inventorship for the U.S.S.N. 08/874,109 application should be corrected to add Mr. Miao. Accordingly, on June 23, 2000, a meeting was held between representatives of DuPont and representatives of Cargill. I was present at that meeting. One of the subjects discussed at that meeting was correction of inventorship for the U.S.S.N. 08/874,109 application to add Mr. Miao as an inventor.

6. Cargill and DuPont engaged in follow-up discussions after the June meeting. On September 15, 2000, I sent Lynne Christenbury, an attorney at DuPont, a letter which is attached as Exhibit A. Enclosed with my letter to Ms. Christenbury was a copy of the U.S.S.N. 08/874,109 application. I also enclosed a letter addressed to Mr. Miao and associated papers and signature documents. A copy of the letter to Mr. Miao is attached as Exhibit B. The Exhibit A and B letters have been redacted to remove confidential information that is not relevant to correction of inventorship.

7. I requested that Ms. Christenbury forward Mr. Miao's letter and the enclosed application, associated papers, and signature documents to him, and that the enclosed Declaration under 37 C.F.R. § 1.63 ("Declaration") be signed by Mr. Miao and returned to me or Ronald C. Lundquist. As indicated in my letter

DLB/jp 3/27/01 226937

Attorney's Docket No.: 07148-063003

to Ms. Christenbury, I informed DuPont that if the signed Declaration of Mr. Miao was not received by September 30, 2000 Cargill would be compelled to treat Mr. Miao as an uncoöperative inventor.

8. On at least three occasions between September 30, 2000 and February, 2001, I inquired of Ms. Christenbury by telephone whether or not Mr. Miao would be returning a signed Declaration for the patent application. I received no affirmative response from her indicating that Mr. Miao would sign the Declaration unconditionally, and I have not received to date, from Mr. Miao or Ms. Christenbury, the signed Declaration for the patent application. Nor has Mr. Miao or Ms. Christenbury indicated that they are not in receipt of the application or Declaration.

9. Because U.S.S.N. 09/771,904 is the same application as U.S.S.N. 08/874,109, Mr. Miao has had the full opportunity to sign the Declaration as an inventor for the U.S.S.N. 09/771,904 application, which he has failed to do.

DLB/jp 3/27/01 226937

Attorney's Docket No.: 07148-063003

10. I hereby declare that all statements made herein of my knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patents issued thereon.

Date: March 27, 2001David L. BiekDavid L. Biek  
Reg. No. 33,647

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David\_Biek@cargill.com

September 15, 2000

VIA COURIER

Lynne M. Christenbury, Esq.  
Legal Department  
E. I. du Pont de Nemours and Company  
1007 Market Street  
Wilmington DE 19898

RE: U.S.S.N. [REDACTED] 08/874,109, [REDACTED]

Dear Lynne:

As mentioned by Cargill at our June 23, 2000 meeting in Wilmington, [REDACTED]

[REDACTED]

[REDACTED]

Lynne M. Christenbury, Esq.  
September 15, 2000  
Pag 2

[REDACTED]

[REDACTED] we enclose [REDACTED] a copy of each patent application in its current form, a list of art cited to the PTO, as well as Inventorship Declarations and [REDACTED] for each application. Please provide these documents, and the accompanying cover letter, to Guo-Hau for review and signature. Please return the executed Inventorship Declarations and Assignment Deeds to Ron before September 30<sup>th</sup>. If we do not receive these signed documents by September 30<sup>th</sup>, we will be compelled to treat Guo-Hau as an "uncooperative inventor" in accordance with Patent Office procedure.

[REDACTED]

Please call me with any questions that you may have.

Very truly yours,

*David L. Biek*

David L. Biek

[REDACTED]

# CARGILL, INCORPORATED

## LAW DEPARTMENT

BIEK EXHIBIT B

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September 15, 2000

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JAN 25 2002

PETITIONS OFFICE

Guo-Hau Miao  
E. I. DuPont de Nemours & Company  
Wilmington, DE 19880

RE: U.S. Patent Application Serial Nos. [REDACTED]

08/874,109 (filed June 12, 1997)

Cargill Ref Nos.: [REDACTED] A21-535.13

Dear Guo-Hau:

Based upon information available to us, a determination has been made that you are an inventor, along with other individuals, of pending claims in the applications filed by Cargill, Incorporated which are identified above. As a consequence of the inventorship determination, a change must be made in the named inventors on each of these pending applications. To effectuate the change in named inventors and to record ownership of the applications, I have enclosed the relevant application documents as well as certain documents that need to be filed with the U.S. Patent & Trademark Office for these applications.

The enclosed documents include a copy of the [REDACTED]

08/874,109 application as filed. [REDACTED]

Copies of amendments made to the claims and specifications of the [REDACTED] applications are also enclosed.

I have also enclosed documents that are to be filed with the U.S. Patent & Trademark Office with respect to these applications. First, I have enclosed a P tition to



Guo-Hau Miao  
September 15, 2000  
Pag 2

Correct Inventorship, to be signed and dated by you, which state that the error in inventorship occurred without any deceptive intent on your part and indicates who the correct inventors are believed to be.

Second, the Patent & Trademark Office requires a declaration from each named inventor. I have enclosed a Declaration for each of the above-identified applications, to be signed and dated by you. This document also gives a Power of Attorney to the attorneys named in the document to work on your behalf in the prosecution of these applications before the U.S. Patent & Trademark Office.

[REDACTED]

Please review the enclosed documents and, if the [REDACTED] Declaration and Petition documents are satisfactory, sign and date them where indicated. [REDACTED] After signing and dating, please return the Declaration, [REDACTED] and Petition to me as soon as possible in the enclosed postage-paid Express Mail envelope.

Finally, the Declaration indicates that the inventors acknowledge the duty to disclose information that is material to patentability. The duty is a requirement of the U.S. patent laws and regulations. In order to comply with this requirement, we have enclosed a List of Information submitted to the U.S. Patent & Trademark Office for each application. Let me know if you are aware of any publications or articles other than those on the enclosed list that: 1) were published on or before the filing date of those applications; and 2) are material to patentability. It is not necessary to do a search. However, there is a continuing duty to disclose information. Thus, if you become aware in the future of any article that fall into the above category, please let me know. Feel free to contact me if you have any questions about this requirement.

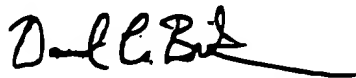
As an inventor of the claimed subject matter of these applications, you may retain the application and amendment documents, and the list of information submitted to the Patent & Trademark Office. You may also retain a signed copy of the Declaration, Assignment and Petition documents. However, please be aware that all of the enclosed documents and information constitute CARGILL CONFIDENTIAL INFORMATION.

Guo-Hau Mia  
September 15, 2000  
Page 3

We do appreciate your cooperation in attending to these documents, and in letting us know if you are aware of any additional article that should be cited to the Patent & Trademark Office.

Please feel free to phone me if you have any questions.

Very truly yours,



David L. Biek

